

DOCUMENT RESUME

02877 - [A1892970]

[Waiver of Overpayment of Pay and Per Diem]. B-189170. July 5, 1977. 3 pp.

Decision re: James B. Corey; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of State.

Authority: 5 U.S.C. 5584. B-168655 (1970).

Former Federal employee requested reconsideration of denial of waiver of overpayments for per diem and salary. Per diem is a travel allowance which is expressly excluded from waiver by statute. Request for waiver of salary overpayment was filed over 3 years after discovery of error, and waiver was thus barred by 3 year statutory limitation. (Author/DJM)

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**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20543

FILE: B-189170

DATE: July 5, 1977

MATTER OF James B. Corey - Waiver of Overpayment of Pay  
and Per Diem

DIGEST: Former employee of Department of State requests waiver of overpayments of diem and pay. Waiver of both are denied. Per diem is travel allowance which is expressly excluded from coverage of waiver statute, 5 U.S.C. § 584. Request for waiver of overpayment of pay was received in GAO more than 3 years after date of discovery of error and waiver is, therefore, specifically barred by statute.

By letter dated April 25, 1977, received in the General Accounting Office on May 2, 1977, Mr. James B. Corey has requested reconsideration of denial of his request for waiver of overpayment of per diem by our Claims Division on April 22, 1977, DWZ-2708244-104.

Overpayments of per diem totaling \$981.25 were made to Mr. Corey in 1969 and 1970 when he was an employee of the Department of State. The overpayments were discovered by the General Accounting Office and stated in Notice of Exception No. 300039, dated June 21, 1973. By letter dated April 26, 1976, to the Comptroller General, Mr. Corey requested waiver of the overpayments and mentioned in his letter that he had recently had to repay another overpayment, this one of salary, in the amount of \$639.18. There is no record of the original of this letter having been received in the General Accounting Office. When Mr. Corey learned this, he submitted a copy which was received on August 16, 1976.

The overpayment of \$639.18 consisted of three overpayments in 1971 and 1972. While the record is not clear as to the exact date, the overpayments appear to have been discovered some time in 1972. The Department of State's first notice of the indebtedness and request for repayment to Mr. Corey was dated December 12, 1972. His reply acknowledging the total salary overpayment of \$639.18 and indicating his intent to repay it was dated March 5, 1973.

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The Claims Division construed the April 26, 1976, letter to be a request for waiver of both the per diem overpayments and the salary overpayments, and denied waiver of both--per diem on the ground that there was no authority for the waiver of travel and transportation expenses and allowances, and salary on the ground that Mr. Corey was or should have been aware of the overpayments when he received them. In his present request for reconsideration of the Claims Division action, received May 2, 1977, Mr. Corey states that in his letter of April 26, 1976, he asked only for waiver of the overpayment of per diem in the amount of \$981.25, and not for waiver of the overpayment of salary in the amount \$639.18, which he had repaid. However, he also requests that, if the per diem overpayment cannot be waived, the amount of salary overpayment be reimbursed to him so that he could apply such amount against his indebtedness. We construe the latter request as one for waiver of the salary overpayments.

The statutory authority for the waiver of overpayments of pay and allowances is contained in section 5584 of title 5, United States Code, which provides in pertinent part as follows:

"(a) A claim of the United States against a person arising out of an erroneous payment of pay or allowances, other than travel and transportation expenses and allowances \* \* \*, to an employee of an agency, the collection of which would be against equity and good conscience and not in the best interests of the United States, may be waived in whole or in part by--

"(1) The Comptroller General of the United States \* \* \*.

\* \* \* \* \*

"(b) The Comptroller General \* \* \* may not exercise his authority under this section to waive any claim:--

\* \* \* \* \*

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"(2) \* \* \* if application for waiver is received in his office after the expiration of three years immediately following the date on which the erroneous payment of pay was discovered \* \* \*." (Emphasis added.)

As to the overpayment of per diem, there is no authority for waiver. Per diem is a travel allowance and as such it is specifically excluded by the statute from the types of overpayments which may be waived. B-168655, May 27, 1970.

As to the overpayment of salary, the statute specifically provides that such overpayments may not be waived if the application for waiver is received in the General Accounting Office after the expiration of 3 years immediately following the date on which the erroneous payment was discovered. The record indicates that the overpayment was discovered some time in 1972, that notice dated December 12, 1972, was sent to Mr. Corey, and that he had actual knowledge of it at least by March 5, 1973. Yet by his own statement he did not request waiver of this overpayment until his April 25, 1977, letter which was received in our Office on May 2, 1977. Even if April 26, 1976, the date of his earliest letter to our Office which was apparently lost, were to be construed to be the date of the receipt of his request for waiver, his request still would not have been received within the 3-year limitation period specified by the statute.

Since the foregoing provisions are prescribed by statute, they are mandatory and the General Accounting Office has no authority to waive or modify their application. Therefore, the denial by the Claims Division of waiver of the overpayments to Mr. Corey of both per diem and salary is sustained.

  
Deputy Comptroller General  
of the United States